



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

April 23, 2015

Mr. Robert A. Gaddie - #852477  
Plainfield Correctional Facility  
727 Moon Road  
Plainfield, Indiana 46168

*Re: Formal Complaint 15-FC-97; Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana Supreme Court Disciplinary Commission*

Dear Mr. Gaddie,

This advisory opinion is in response to your formal complaint alleging the Supreme Court Disciplinary Commission ("Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Commission has responded via Mr. G. Michael Witte, Executive Director. His response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 13, 2015.

## BACKGROUND

Your complaint dated March 3, 2015 alleges the Indiana Supreme Court Disciplinary Commission violated the Access to Public Records Act by not producing requested records in violation of Ind. Code § 5-14-3-3.

On February 23, 2015, you submitted a public records request to the Commission seeking the names and case numbers of fifteen (15) criminal cases from a specific attorney. The Commission responded by providing a copy of the attorney's current licensure status.

The Commission responded to your formal complaint arguing the Indiana Supreme Court Rules and Section 22 of the Indiana Rules for Admission to the Bar Rule 23 prohibit disclosure of information received by the Commission before a verified complaint has been filed by the Commission. It states the information provided is the only publicly available documents.

## **ANALYSIS**

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Indiana Supreme Court Disciplinary Commission is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Commission’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Generally, records of the Commission are public records subject to disclosure; however, Ind. Code § 5-14-3-4(a)(8) states public records declared confidential by or under rules adopted by the supreme court of Indiana are excepted from the APRA and may not be disclosed by a public agency. The Indiana Rules of Court and the Indiana Rules for Admission to the Bar and the Discipline for Attorneys are rules adopted by the supreme court of Indiana. Furthermore, Indiana Administrative Court Rule 9(G)(2)(b)(xi) declares the following information confidential:

proceedings and papers in attorney disciplinary matters that relate to matters that have not resulted in the filing of a verified complaint, investigative reports and other work product of the Executive Secretary, employees or agents of the Disciplinary Commission, statements of circumstances conditionally agreeing to discipline, and affidavits of resignation or consenting to discipline pursuant to Admission and Discipline Rules 23

The only disclosable information is what is contained in the publicly accessible file in the case number filed against the attorney. Evidently the information you seek is not contained in that file. To the extent it would be in an investigative report, it is not subject to disclosure.

## **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Indiana Supreme Court Disciplinary Commission has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Mr. G. Michael Witte